Supreme Court, U.S.
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In The

Supreme Court of the United States

JAMES G. MAHORNER, an individual, *Pro Se*,

Petitioner,

v.

GEORGE W. BUSH, JR., as President of the United States and individually,
and
PAUL H. O'NEILL, as Secretary of the Treasury and individually,

Respondents.

On Petition For *Writ Of Certiorari* To The United States Court Of Appeals For The District Of Columbia Circuit

PETITION FOR *WRIT OF CERTIORARI*

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QUESTIONS PRESENTED FOR REVIEW

1. Do the early treatises, early Supreme Court cases, Constitutional debates, and early War of Nations meaning of "declare war" establish that Congress has the exclusive, undelegable power to initiate war against a foreign nation?

2. If there is no judicial relief available, does the right of self-defense against unconstitutional action (*The Federalist Papers*, 28) guarantee the governed civilian citizens the right of forcible response to unconstitutional action if it is causing the death of more such citizens than it is causing the death of armed forces members and other members of the governing class or is otherwise causing a threat of physical injury to them?

3. Does the unconstitutional initiating of war by an individual resulting in the death of many non-military citizens against the original stated intent that their blood not be shed by the decision of one individual but only by the judgment of the many Congressional members provide each such citizen with standing to oppose the unconstitutional action, make the issue justiciable, and make the issue non-political?

4. If judicial relief is denied on the basis of lack of standing, lack of justiciability, or the issue is political, does the threat of retaliatory death to the governed citizens (threat evidenced by the government's need for the shelters) and their exclusion from the shelters built by and designated for the safety of the governing class give to the individual the right of forcible opposition to a president acting *ex-cathedra* and unconstitutionally?

QUESTIONS PRESENTED FOR REVIEW – Continued

5. Does U.S. aid to the sovereign theocracy Israel's practice of the Religious Law of Right of Return, which rewards U.S. Christians and others who convert to Judaism with all the rights, privileges and protections of Israeli citizenship, violate the religious protection of Amendment I of the U.S. Constitution (compared with aid to sovereign Vatican used to provide a monetary reward to U.S. citizens who convert to Catholicism)? (Issue is mooted if Israel repeals the application of the Right of Return to U.S. citizens who convert.)

6. If there is no judicial alternative, what is the Constitutionally-permitted alternative to the citizens' constitutional right of self-defense against those who endanger them by unconstitutional actions?

7. Whether there was a substantial post-Revolutionary War fear among the people that the presidential office-holders would exercise those tyrannical powers previously forthcoming from the King of England, so as to render the inducement of the guarantee of the right of self-defense (*The Federalist Papers,* 28), and that the president would not have the King's power to initiate foreign wars (*The Federalist Papers,* 41 and 69) a substantial part of obtaining ratification of the U.S. Constitution, so as to cause a government removal of either such guarantees, enforced by judicial rejection of challenges to their removal, invalidate the instrument?

8. Would a well-developed legal science or law computer provide that the power to interpret does not include the power to re-interpret, so as to cause previous interpretations to be subject to change only by formal amendment of the U.S. Constitution?

QUESTIONS PRESENTED FOR REVIEW – Continued

9. Does the glory bestowed on the executive branch and its military by war create a conflict of interest rendering the executive without competence to objectively determine the need for war.

LIST OF PARTIES

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CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS

Mahorner v. Bush, et al., 224 F. Supp. 2d 48.

District Court Case No. 1:02CV01530. Opinion of the court was entered and published and is reproduced in full in the Appendix attached hereto.

Appellate decision was unpublished. Appeals Court Case No. 02-5335.

CONCISE STATEMENT FOR BASIS OF JURISDICTION

ORDER BEING SOUGHT TO REVIEW

The order being sought to review is from the United States Court of Appeals for the District of Columbia Circuit, Case No. 02-5335, and dated February 12, 2003. No rehearing was requested.

STATUTORY PROVISIONS

Jurisdiction lies with this court pursuant to 28 U.S.C. Section 1254(1), as follows:

> "Section 1254. Courts of appeals; certiorari; certified questions
>
> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

Review is sought pursuant to Supreme Court Rule 10(c).

Supreme Court Rule 10(c) states "review on a *writ of certiorari* will be granted only for compelling reasons, one of which is when a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court." Petitioner asserts that the question of whether the right to declare war rests solely with the U.S. Congress is one of paramount importance. Petitioner asserts that not only is this a federal constitutional law question that should be settled by this court, but one that can **only be settled by this Court**.

CONSTITUTIONAL PROVISIONS

Amendment I of the U.S. Constitution and Article I, Section 8, Clause 11 of the U.S. Constitution.

BASIS FOR FEDERAL JURISDICTION IN APPEALS CASE

The basis for federal jurisdiction asserted in the United States Court of Appeals for the District of Columbia Circuit case was 28 U.S.C. Sections 1331, 1361, 1651, 2201-2202.

NOTICE REQUIRED BY RULE 29.4(a)

Notification required under Supreme Court Rule 29.4(a) has been made.

CONCISE STATEMENT OF THE CASE

The case was initiated by a complaint filed in Federal District Court, District of Columbia, Washington, DC, pursuant to federal question jurisdiction (28 U.S.C. 1331) asserting the following:

1. Defendant, George W. Bush, was undertaking to initiate war against foreign countries in breach of the exclusive war power of Congress (U.S. Const., Article I, Section 8, Clause 11).

2. That such action was creating a substantial danger to Plaintiff and his governed class, who are and were excluded by force of arms from survival in fallout shelters when the expected retaliatory foreign action against the civilian population in this country was forthcoming (the danger being evidenced by the fact that casualties among U.S. civilians have been much greater in the last ten years than the casualties among the governing class, including the military).

3. That the aid being given to Israel increases the threat referenced above.

4. Hamilton stated in *The Federalist Papers 28* as an inducement to ratification of the U.S. Constitution, "If the representatives of the people betray their constituents, there is then no resource left but in the exertion of the original right of self-defense, which is paramount to all positive forms of government, and which against

the usurpation of the national rulers may be exerted with infinitely better prospect of success than against those of the rulers of an individual state."

5. That modern technology permits instant electronic voting by Congress on a declaration of war, even when not in session.

6. In order to further highlight the government's lack of care for the people's interest compared to its own interest, the complaint sets forth portions of the Massachusetts Institute of Technology publication, America's Ground Zero, that establishes the government exploded 125 hydrogen bombs above ground in this country, each of which has spread more radiation than was spread by Chernobyl, causing substantial health problems and death to the population that could have been avoided by conducting the tests in U.S. holdings in Antartica.

7. The complaint cites a media article about a mysterious truck shipment of radioactive material into this country from Canada, which detected radiation consistent with plutonium, the only material necessary for adversaries to construct and explode a small atomic bomb in the U.S., and such was not known to the U.S. government until 14 days after shipment, and has not been located by the government.

8. The complaint set forth that Plaintiff was a Christian; that Israel and Vatican are theocracies with sovereignty; that the location of Israel being designated by God as the homeland of Judaism and the Vatican being designated by Christ through his disciple Paul as being the homeland of Christianity, and that Israel has

codified God's Law of Return and through it, gives the right of immediate Israeli citizenship to those U.S. citizens who leave non-Jewish religions and convert to Judaism. Thus, the taxes of many U.S. citizens of many faiths are financing Judaism in this country, comparable to the Vatican using foreign monetary aid from this country to give a cash award to any U.S. citizen who converts to Catholicism.

9. The complaint requested a declaration that the Defendant violates the U.S. Constitution if he initiates war in a foreign country; an injunction against such conduct (as was given by this Court two centuries ago against certain presidential actions and was ignored by President Andrew Jackson), and a declaration that U.S. tax monies cannot be used to finance Israel, unless the Religious Law of the Right of Return is repealed as to its application to citizens of this country.

10. Plaintiff filed a Motion for Emergency Preliminary Injunction, which Defendants opposed. Plaintiff then filed a timely response to Defendants' opposition.

11. On September 16, 2002, the U.S. District Court for the District of Columbia entered its final order dismissing the matter and issued its Memorandum Opinion finding that Plaintiff had no standing, that the issue was non-justiciable, and on political question. For purposes of review, all facts set forth in the original case are to be true.

12. Plaintiff took timely appeal to the U.S. Court of Appeals, District of Columbia, and filed therein a Motion for Acceleration of Final Determination, which was opposed by Defendants. The

Appellate Court delayed the operation of the briefing rule by entering its order on October 28, 2002.

13. Plaintiff filed a response to the government's motion for summary affirmance, attaching thereto the 1817 Harper & Rowe publication The Genius of the People wherein it is stated that the delegates could scarcely conceive where else the power to commit the blood and treasury of the nation to war could be lodged except among the direct representatives of the people and of the states, and urged that inasmuch as war constituted no threat of loss of blood to officers of the government who had access to fallout shelters from which Plaintiff was excluded, that Plaintiff had unique, if not exclusive, standing to present the issue, which was unshared by the Congressmen who previously brought a similar suit because they had access to the fallout shelters.

14. The Appeals Court granted summary affirmance on February 12, 2003 and stated that such final order would not be published.

REASONS FOR ALLOWING THE WRIT

In a case decided in 1964, Petitioner representing Florida (one of two cases) stated to this court that the threat to humanity was not caused by the development of the physical sciences that built on the development accomplished by the preceding generation, but with the retardation of social sciences, such as law, which designated the previous generation reactionary and started anew, causing the threat to be at its highest level unchallenged by a well-developed mathematical form of law controlled by original

intent, precedent, and other legal principles. The court was informed that eventually individuals would own small atomic weapons and that if an impersonal non-mathematical decision was not forthcoming, this court would be overruled. (Argument in part involved violation of Amendment Clause by excluding southern senators for one day while proposing the Fourteenth Amendment).

Today's case presents an opportunity for this court that will not be forthcoming again for a substantial length of time and may then be too late to rule whether the lives of the people will be threatened by retaliatory action from a war initiated by declaration of the judgment after debate of the many government representatives or at the whim of one individual such as a previous president who had Addison's Disease at the time of a nuclear crisis, which disease substantially reduces the judgment ability of its victim. It contributed to the president's forgetting to cancel scheduled hydrogen bomb test, forgetting to cancel U2 flights over Russia and delaying making an agreement to remove U.S. missiles in Turkey which were the cause of Russia's action. The mistakes would not have been of such magnitude if the many minds of Congress were handling the problem and no government radiation shelters, some in Palm Beach area, had not been made available to all his family including cousins. This opportunity before the Court should not be rejected because of past concerns that the Court lacks war expertise. It has expertise equivalent to that in Congress and is only deciding whether Congress has exclusive power to initiate war.

The government, by its action of spending huge amounts of tax monies for current maintenance of fallout protection solely for its agents, has absolutely established that there exists a substantial threat of current retaliation

because of presidential war against foreign nations. This court can take judicial notice that the danger is so imminent that the fallout shelters for the judiciary (each branch having its own so that a successful attack on one shelter will not destroy those in another) is presently maintained at the highest level of preparedness, and that the security of such shelters is equally maintained so that should Petitioner or other members of the governed class undertake to enter with or without their children, they will be shot if necessary to maintain the security of the shelter. Government does not need the benefit of the judgment sought from this court by Petitioner. Its agents do not have standing. Standing is unique to the Petitioner-Plaintiff and those in his class who are denied access to the fallout shelters and other protections available to government agents.

The question is justiciable and not barred by the political question rule or the justiciable question. The right of self defense is preserved by the U.S. Constitution as stated and used as a guarantee that should the judiciary not give relief from unconstitutional action that creates or enhances the threat against the people, that individuals have the right to use force to remove the source of danger.

A judgment by this court finding that the U.S. Constitution permits the president to initiate wars against foreign countries causes the right of self defense as a legal remedy to cease. If there is no judgment by this court, an individual on trial for using the right will probably be entitled to a jury instruction as to whether the victim had the constitutional power to do the action in question and if the trial court that the victim did not, there will be a jury

instruction that should the jury find that the unconstitutional action endangered the defendant, the jury must acquit.

There is presented here the issues regarding justiciability, political question and standing, arguments such as the issues of self-defense, danger evidenced by current upkeep of fallout shelters, the exclusion of all non-governmental citizens from the shelters, and other factors that have never been ruled on by this court and have not been presented to any court until the filing by Petitioner. If the court declines to address the questions presented, there may arise within a few years the loss of life of many non-governmental citizens because of a cause that may have been removed by this court's determination of the constitutional right of the president to make war. Even if the court rules such power is in the president and the U.S. Constitution, there will be the benefit of removing from him the threat of constitutionally-guaranteed right of a citizen to use self-defense remedies to protect himself and his children from unconstitutional actions.

Petitioner asserts that the question of whether the right to declare war rests solely with the U.S. Congress is one of paramount importance. Petitioner asserts that not only is this a federal constitutional law question that should be settled by this court, but one that can **only be settled by this Court**. In early times this court, federal courts and state courts have stated that the power to initiate war is solely in the Congress without addressing later created doctrines of justiciable, standing and political question, even when applicable. In the case of *The Brig Amy Warwick*, 67 U.S. 635, 17 L. Ed. 459, this court ignored the modern bars of justiciability, political question and standing to rule, on behalf of ship owners threatened

with the loss of property enabled the court to address the presidential war powers. In the case of *Kiyoshi Hirabayashi v. U.S.*, 1943, 63 S.Ct. 1375, 320 U.S. 81, 87 L. Ed. 1774, this court ignored the bars to rule on the war power question on behalf of those who were losing their freedom, and in this case the question is raised by one threatened with loss of life by unconstitutional government action (note also *Marbury v. Madison*, 5 U.S. 107, 1 Cranch 137 (1803)) where Chief Justice Marshall ruled upon the potential political question of the power of President Adams to appoint judges at the end of his administration, which appointments Marshall acting as Secretary of State as well as Chief Justice of the Supreme Court had failed to timely deliver). The threat is evidenced by facts established by the complaint regarding the secret radiation shipment into this country from Canada, which was media published the day before the complaint was to be taken to Washington, D.C., for filing, resulting in an addition to the complaint. There was published in WorldLink satellite channel (where prominent scientists appeared) on Thursday, May 8, 2003 (the night before this petition is to go to the printers) that a nuclear explosion making uninhabitable lower Manhattan is a current possibility, and that an attack by foreign missiles of China or North Korea is a possibility within the next five years, which is a very short period of time to re-introduce Petitioner's question at the U.S. Supreme Court level. Should these threats occur, there is a present intent that Petitioner and his children would be forcibly excluded from the fallout shelters, and they will receive a dose of radiation which makes them ill for a couple of days and then suffer the inevitable and very painful radiation death, which will commence at the end of a comfortable two-week period. The government has indicated a present need to issue potassium iodide pills to

the population to render them less vulnerable to radiation poisoning from explosion of nuclear devices. Comparing the exposure of the population to the protections exclusively for government indicates that the issuance of cyanide pills would be more appropriate than the issuance of iodide pills. The members of this court will be fully protected by government because the danger is treated as imminent. Petitioner lives within two miles of a prime target, the Mayport Naval Air Station, from which departed the Kennedy and other powerful naval vessels used in recent and past foreign wars initiated by the president and which is to berth a nuclear powered aircraft carrier. Petitioner lives within one mile of the St. Johns River where many foreign ships with capability of having aboard undetectable nuclear devices pass continuously and which are not scanned by the government until they have traveled ten miles from Petitioner's home.

Israel can mute the religious question presented by making inapplicable its codified law of the Religious Law of Right of Return to U.S. citizens who convert to Judaism. The well-recognized superior nature of the many Jewish people who benefit from the Jewish law; the fact that Israel has many nuclear bombs made from a U.S. design, the fact that Israel has many of our most-sophisticated Apache helicopters (one used as recently as May 8, 2003 to destroy two Arab enemies), and the fact that Israel has the most advanced armed forces in the locale will result in a refusal to repeal the codified religious law. If aid from this country then ceases, the retribution that the U.S. has received on September 11th, caused by our support of Israel war against her neighbors and the initiating of war unconstitutionally by the president will cease should those causes be favorably addressed by this court.

The court members receive the only lifetime appointments within our government, solely so that there can be justice for the powerless without fear of adverse consequences to the Court. This court's protection was not forthcoming during the incarceration in un-air conditioned desert concentration work camps of the majority of Asian adults and children (even non-Japanese) during WWII with this court's support, and their homes taken for the inability to pay taxes during their slavery. The racism involved of placing the racially-identified Asians in work camps calculated to reduce their life expectancy, while leaving free the German and Italian Americans who had no racial identifications resulted in the American citizens who did not participate in the wrong being taxed to pay reparations to the survivors. The issues now before the court are similar. A popular president is with majority support acting *ex-cathedra* to initiate foreign wars in a manner which is in defiance of the original intent of the U.S. Constitution. This original intent was strongly recognized by Thomas Jefferson, who refused for a year to unconstitutionally respond to British kidnapping of our seamen until Congress constitutionally initiated the war of 1812.

Briefing is needed by each of the parties to fully develop what may be the most important issues of this century.

Respectfully submitted,

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